

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION

CARL GORDON,

Plaintiff,

v.

ELENI KOUNALAKIS, et al.,

Defendants.

Case No. CV 24-03683-MRA (AS)

ORDER ACCEPTING FINDINGS,

CONCLUSIONS AND RECOMMENDATIONS OF

UNITED STATES MAGISTRATE JUDGE

Pursuant to 28 U.S.C. section 636, the Court has reviewed the Complaint, all of the records herein, and the Report and Recommendation of a United States Magistrate Judge. **On November 30, 2024, Plaintiff filed a provisional objection and notice of conditional objection to the Report and Recommendation (Dkt. No. 69), and on December 9, 2024, Plaintiff filed objections to the Report and Recommendation (Dkt. No. 80).**

The Complaint raised various claims challenging the conduct of California officials, particularly the Lieutenant Governor, during the recall election for Governor in 2021. (Dkt. No. 1.) The Report recommends the grant of Defendant's motion to dismiss

1 and the dismissal of this action with prejudice. (Dkt. No. 57.)
2 Plaintiff's objections to the Report (Dkt. Nos. 69, 80) do not
3 warrant a change to the Report's findings or recommendations.
4

5 Plaintiff objects that the Report misinterpreted the word
6 "any," as it described the Lieutenant Governor's duties in the
7 recall election, particularly her alleged duty to sign two bills
8 relating to the election. (Dkt. No. 69 at 5-8.) As the Report
9 noted, according to an advisory posted on a state government
10 website, "any of the Governor's duties related to the recall are
11 performed by the Lieutenant Governor." (Dkt. No. 57 at 26.) But
12 as the Report also found, this informal statement, which makes no
13 reference to the Governor's legislative duties, does not show that
14 the Lieutenant Governor was authorized, much less required, to sign
15 the bills. (*Id.*) Plaintiff's objection also overlooks the
16 Report's analysis that, even if he is correct that the Lieutenant
17 Governor had a duty to sign the bills as a matter of state law,
18 there still was no clearly established violation of Plaintiff's
19 federal due process rights. (*Id.* at 26-28.)

20
21 Plaintiff objects that the Report applied incorrect standards,
22 required evidentiary backing, improperly resolved factual
23 disputes, and denied Plaintiff procedural fairness. (Dkt. No. 80
24 at 8-12, 23-24, 39-41.) These objections are unsupported. The
25 Report set forth and applied the correct legal standards in
26 analyzing the Rule 12 Motion. (Dkt. No. 57 at 10-13.) The Report
27 also did not depend on the absence of supporting evidence, resolve
28

1 factual disputes, or deny Plaintiff a fair opportunity to litigate
2 his claims.

3

4 Plaintiff objects that he has plausibly stated claims for
5 violations of his federal constitutional rights. (Dkt. No. 80 at
6 13-17, 24-25.) These objections overlook the Report's analysis
7 that, to the extent the claims are not moot, Defendant is entitled
8 to qualified immunity as to these claims because her alleged
9 actions did not violate any clearly established federal rights of
10 which a reasonable state officer would have known. (Dkt. No. 57
11 at 24-31.)

12

13 Plaintiff objects that his claims are not moot because
14 Defendant's unconstitutional actions caused ongoing harm,
15 including impairing Plaintiff's status as both a candidate and a
16 voter. (Dkt. No. 80 at 17-18, 23, 26.) As the Report found,
17 Plaintiff fails to identify any ongoing alleged violations of his
18 rights that this Court could remedy by the grant of prospective
19 relief in this case. (Dkt. No. 57 at 16.) Plaintiff cannot obtain
20 relief from the 2021 election itself or its ongoing effects. (*Id.*)

21

22 Plaintiff objects that the recall laws were void and that
23 Defendant abdicated her recall-related duties. (Dkt. No. 80 at
24 18-22, 25-26, 33-38.) These objections are not responsive to the
25 Report's findings that Plaintiff's federal claims are moot or
26 barred by qualified immunity. As to qualified immunity, the Report
27 explained in detail that it was not clearly established that
28 Defendant's alleged failure to perform her mandated duties during

1 the recall period violated due process, constituted a taking, or
2 impaired a contractual relationship with the state. (Dkt. No. 57
3 at 24-31.) Plaintiff does not substantively address the Report's
4 analysis.

5

6 **After having made a de novo determination of the portions of**
7 **the Report and Recommendation to which Objections were directed,**
8 **the Court concurs with and accepts the findings and conclusions of**
9 **the Magistrate Judge. In sum, Plaintiff's Objections do not cause**
10 **the Court to reconsider its decision to accept the Magistrate**
11 **Judge's conclusions and recommendations.** Accordingly, the Court
12 concurs with and accepts the findings and conclusions of the
13 Magistrate Judge in the Report and Recommendation.

14

15 **IT IS ORDERED** that (1) Defendant's request for Judicial Notice
16 (Dkt. No. 22-1) is GRANTED; (2) Plaintiff's request for Judicial
17 Notice (Dkt. Nos. 52-53) is GRANTED; (3) Defendant's Motion to
18 Dismiss (Dkt. No. 22) is GRANTED; and (4) Plaintiff's Complaint is
19 DISMISSED WITH PREJUDICE.

20

21 **IT IS FURTHER ORDERED** that the Clerk serve copies of this
22 Order and the Magistrate Judge's Report and Recommendation on
23 Plaintiff and counsel for Defendants.

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25 DATED: January 22, 2025

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MONICA RAMIREZ ALMADANI
UNITED STATES DISTRICT JUDGE

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